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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

H<sub>2</sub>

FILE:

Office: ATLANTA, GA

Date: **JAN 29 2010**

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Atlanta, Georgia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Korea who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant's spouse and two children are lawful permanent residents and she seeks a waiver of inadmissibility in order to reside in the United States with her family.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, at 2, dated September 13, 2008.

On appeal, counsel details the hardship that the applicant's spouse and children would experience if the applicant were removed. *Form I-290B*, at 2, received October 10, 2008.

The record includes, but is not limited to, counsel's brief, statements from the applicant's spouse and children, financial records, and a psychological evaluation of the applicant's family. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
  - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

- (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -
  - (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
  - (ii) the admission to the United States of such alien would not be contrary to the

national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

The record reflects that the applicant was convicted on August 10, 2006 of Misprision of Felony under 18 U.S.C. § 4. As such, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. *Matter of Robles-Urrera*, 24 I&N Dec. 22 (BIA 2006). Accordingly, the applicant must seek a waiver of her inadmissibility under section 212(h) of the Act.

A section 212(h) waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent or child of the applicant. Hardship to the applicant is not considered in section 212(h) waiver proceedings unless it causes hardship to a qualifying relative. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. [*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted)].

The AAO notes that extreme hardship to a qualifying relative must be established whether the qualifying relative resides in South Korea or in the United States, as the qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Korea. On appeal, counsel asserts that the applicant's children would suffer extreme hardship if they were to relocate to South Korea where they have not lived since they were very young and where they do not know the language or culture. *Form I-290B*, received October 10, 2008. The record reflects that the applicant and her children came to the United States in 1999, when the applicant's daughter was six years of age and her son was four years of age. In the psychological evaluation submitted for the record, psychologist Dr. [REDACTED] notes that the applicant's children are primarily English-speakers and are not fluent in Korean. *Psychological evaluation*, at 1, dated November 3, 2008. Dr. [REDACTED] also reports that while the applicant speaks and understands English poorly, her spouse speaks only Korean. The applicant's daughter states that other children would make fun of her in Korea for being different and that she cannot speak like them. *Applicant's Daughter's Statement*, at 1-2, dated April 1, 2007. The applicant's son also states that it would be difficult for him to live in Korea because he does not speak or read Korean well and would not do well in school as a result. *Applicant's Son's Statement*, undated.

The AAO also notes that the applicant's children, now 14 and 16 years of age, have lived in the United States for ten years and that the Board of Immigration Appeals (BIA) has found that a 15-year-old child who had lived her entire life in the United States, was completely integrated into the American lifestyle and was not fluent in Chinese would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). While the applicant's children have not lived their entire lives in the United States, they have, nevertheless, resided in the United States for ten formative years and no longer speak their native language fluently. Accordingly, the AAO finds the reasoning in *Matter of Kao and Lin* to be persuasive in this case and the applicant to have established that her children would experience extreme hardship if they were to relocate to South Korea.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. On appeal, counsel asserts that the applicant's spouse, who speaks only Korean, would be unable to raise their children on his own because of the language barriers that exist between him and his children and the world in which the family lives. *Counsel's brief*, at 4. Counsel notes that it is the applicant who is responsible for paying the family's bills and who communicates with the children's school and doctors. Dr. [REDACTED] evaluation also reports that the applicant's spouse is dependent on the applicant for all "adult matters" requiring the use or understanding of the English language. *Psychological evaluation*, at 1. She reports that the applicant's son indicated during the interview that he is unable to communicate fully with his father because of the language barrier. *Id.* The applicant's son further stated that, in his mother's absence, he and his sister would be responsible for all communication requiring English and would be required to make decisions for their family that they do not feel they are prepared to make. *Id.*

The applicant's son also indicated that he and his sister would be unable to care for their father who suffers from stomach problems that cannot be controlled by medication. *Id.* The applicant's daughter states that girls her age need their mother's support to become young women, her mother disciplines her and she can talk to her about anything in the world, her father is not fluent in English, he would be unable to handle anything, including the bills or school conferences, in her mother's absence, and it would be difficult for her to translate for him since she is not fluent in Korean. *Applicant's Daughter's Statement*, at 1.

The AAO notes the communications barrier that exists between the applicant's spouse and his children. It further acknowledges that, in all matters requiring an understanding of the English language, the applicant's spouse is dependent on the applicant and that in her absence that burden would shift to their children. The AAO finds the imposition of such a burden on children who would also be dealing with the normal difficulties and disruptions created by the removal of their mother to constitute extreme hardship. Accordingly, it finds the applicant to have established that her children would suffer extreme hardship if she were to be removed and they remained in the United States.

In that the applicant has established that the bar to her admission would result in extreme hardship to her children, the AAO will not consider whether she has also demonstrated that it would also result in hardship to her spouse, her other qualifying relative.

The granting of a waiver under section 212(h) of the Act is discretionary in nature. There are several favorable discretionary factors for the applicant, including the applicant's lawful permanent resident spouse and children, the extreme hardship that would result for the applicant's children if she were to be removed, the letters from the applicant's brother-in-law, priest and friends attesting to her kindness and character, and the payment of taxes by the applicant and her spouse. The unfavorable factor in the present case is the applicant's criminal conviction.<sup>1</sup>

Although the applicant's criminal history is recent and serious, and cannot be condoned, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.

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<sup>1</sup> The AAO notes that the record contains a Form I-862, Notice to Appear, that charges the applicant with being an F-1 student violator as she did not attend an academic school in the United States after being granted student status on November 21, 2001. The record, however, does not contain documentation that supports this charge.